IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 2073 of 2007(V)

PETITIONERS:

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1. K.M. ABDUL RAHIMAN,
   S/O.B.A. MOHAMMED HAJI, KEEZHOOR,
   KALANAD VILLAGE, CHANDRAGIRI P.O.,
   KASARAGOD TALUK.

2. K.M. KHALID, S/O.B.A. MOHAMMED HAJI,
   KEEZHOOR, KALANAD VILLAGE, CHANDRAGIRI P.O.,
   KASARAGOD TALUK.

3. K.M. HAMZA, S/O.B.A.MOHAMMED HAJI,
   KEEZHOOR, KALANAD VILLAGE, CHANDRAGIRI P.O.,
   KASARAGOD TALUK.,

   PETITIONERS 1 TO 3 ARE REP. BY
   POWER OF ATTORNEY HOLDER ABDUL SALAM,
   S/O.LATE ABDUL KHADER HAJI, MUBARAK MANZIL,
   MELPARAMBU, P.O.KALANAD, KASARAGOD TALUK.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.IMTHIYAZ AHAMED
SRI.SHIRAZ ABDULLA

RESPONDENTS:

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1. THE SPECIAL TAHSILDAR
   (LAND ACQUISITIION), RAILWAY, KASARAGOD.

2. THE DISTRICT COLLECTOR,
   COLLECTORATE, KASARAGOD.

3. THE DEPUTY CHIEF ENGINEER,
   (CONSTRUCTION), SOUTHERN RAILWAY, KANNUR.

BY ADV. SMT.A.RAJESWARI, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: COPY OF THE POWER OF ATTORNEY EXECUTED BY PETITIONERS IN FAVOUR OF ABDUL SALAM.

EXT.P2: COPY OF THE PETITION FILED UNDER SECTION 28A BEFORE THE 1ST RESPONDENT DATED 28.2.2005.

EXT.P3: COPY OF THE ACKNOWLEDGMENT DATED 1.3.2005.

EXT.P4: COPY OF THE ACKNOWLEDGMENT DATED 18.3.2005.

EXT.P5: COPY OF JUDGMENT IN WPC9470/2006 DATED 29.3.2006.

EXT.P6: COPY OF THE ORDER DATED 2.8.2006 PASSED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

K.T.SANKARAN, J

W.P.(C).No.2073 of 2007

Dated this the 18th day of January, 2007

JUDGMENT

Lands belonging to the petitioners were acquired and award dated 17.9.2000 was passed. The petitioners did not make an application before the Land Acquisition Officer for a reference under Section 18 of the Act. However, reference was made at the behest of some other persons whose lands were acquired under the same notification and for the same purpose. As per judgment dated 29.11.2004 in LAR Nos.32/2001, 59/2001 and 62/2001 and other connected cases, Sub Court, Kasaragod enhanced the land value. Thereupon the petitioners submitted Ext. P2 application dated 28.2.2005 under Section 28A of the Land Acquisition Act. It is stated that along with an application a photo copy of the judgment in LAR No.32/2001 and connected cases was produced. Ext.P3 acknowledgment card evidences receipt of Ext. P2 application on 1.3.2005. It is further stated that the first respondent Special Tahsildar (Land Acquisition) returned Ext. P2 application on the ground that certified copy of

the judgment in LAR was not produced. Thereafter the petitioners submitted an application along with certified copy of the judgment on 17.3.2005 which is acknowledged as per Ext. P4 acknowledgment card dated 18.3.2005. Since the application filed under Section 28A was not disposed of, the petitioners filed W.P.(C)No.9470 of 2006 which was disposed of as per Ext.P5 judgment directing the first respondent to dispose of the application filed by the petitioners under Section 28A of the Act. Thereafter, the first respondent passed Ext. P6 order rejecting the application under Section 28A holding thus:

"On verification of the LAR 32/2001 and LAR 59/2001 an appeal proposal has already been sent to the District Collector, Kasaragod. In LAR 59/2001, LAA 1501/05 is pending before the Hon'ble High Court of Kerala.

No application u/s. 28A of L.A. Act shall be entertained when land acquisition appeal case is pending before a court. Moreover, the application u/s 28A filed by the Power of Attorney holder and applied certified copy in LAR 69/01 by the Advocate, without Vakalath."

2. One of the reasons stated for rejecting the application is that an appeal is pending against the decision of the reference court in one of the cases and that in respect of two other cases proposals have already been sent to the District Collector for filing appeal. In **Baburam v. State of U.P.(1995 (2) SCC 689)**, Supreme Court held that when an appeal is pending against the decision of the reference court, the Land Acquisition Officer shall keep the application filed under Section 28A pending awaiting the decision of the appellate court. In paragraph 39 of the judgment it was held thus:

> "As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the LAO would file the appeal against the enhanced compensation in a decree of either the civil court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter

> should inform the Collector/LAO of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under sub-section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the determination, he should obtain an affidavit from the party making the application under Section 28-A that no appeal against the award made under Section 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of."

The decision of the Supreme Court was followed in **Nani v. District Collector (1998(1)KLT 705)**.

3. If an application under Section 28A were to be rejected on the ground that appeal is pending against the decision of the reference court, the applicant would have to make a constant watch of the proceedings before the appellate forum and file the application again after disposal of the appeal. This is not what is contemplated under Section 28A of the Act. Section 28A confers a right on the person whose land was

acquired to get re-determination of compensation on the basis of the compensation awarded to the other land owners, provided the ingredients of Section 28A are satisfied. To direct such a person to keep waiting and to make constant watch of the proceedings before the appellate forum, would be against the letter and spirit of Section 28A. An application under Section 28A has to be filed within the period of limitation. Once the application is filed within the period of limitation, it is liable to disposed of on the merits. If an appeal against the award of the reference court is pending, that is a good ground for not disposing of the application filed under Section 28A. But that is not a ground for rejecting the application. Once the application is rejected, how could the Land Acquisition Officer dispose of the same after the appeal is disposed of? After disposal of the appeal, could he revive an application which was rejected by him finally? Evidently, he cannot do so. A claimant under Section 28A is not expected to make a second application after the disposal of the appeal. Therefore, the only safe and proper course to be adopted is to keep the application under Section

28A pending till the disposal of the appeal and thereafter to dispose of the application on the merits. Ext. P6 order to the extent to which the Land Acquisition Officer rejected the application on the ground that an appeal is pending, is therefore erroneous.

4. The second ground on which the application is rejected is that the application was filed by the power of attorney holder of the petitioners. I am not inclined to accept the view taken by the Land Acquisition Officer. Section 2 of the Power of Attorney Act, 1882 reads thus:

> "2. Execution under power-of-attorney:- The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.
>
> This section applies to powers-of-attorney created by instruments executed either before or

after this Act comes into force."

5. There is no provision of the Land Acquisition Act which insists that an application for reference under Section 18 or an application under Section 28A shall be signed and submitted personally by the person concerned. Section 2 of the Powers of Attorney Act applies to an application under Section 28A as well and therefore the application submitted by the power of attorney holder on behalf of the petitioners was perfectly maintainable. In **C.A.Mohammed Kunhi v. Special Tahsildar (Land Acquisition) Railway, Kasaragod W.P.(C) 8719 of 2006**, it was held that an application for reference under Section 18 of the Act signed and filed by the power of attorney holder on behalf of the claimant was maintainable. Rule 13(2) of the Land Acquisition (Kerala) Rules indicates that an authorised agent of the awardee can appear before the Land Acquisition Officer and also apply for a reference to the court under Section 18. Section 9(3) of the Act provides for serving notice on the occupier and persons interested in the land and such notice can be served on the agent of such occupier or person interested. Section 12(2) of

the Act mandates that the collector shall give immediate notice of his award to the persons interested who were not present personally or by their representatives when the award was made. A power of attorney holder is also a person who can represent the owner of the land. The principles laid down in Mohammed Kunhi's case apply to an application under Section 28A as well. There is no provision in the Land Acquisition Act providing that the application shall be filed by the awardee himself. In the absence of any such provision, the application filed by the power of attorney holder of the petitioners could not be rejected by the Land Acquisition Officer.

6. The third ground on which the application is rejected is that certified copy of the judgment of the reference court was not applied for by an advocate having vakalath. The application under Section 28A shall be filed within three months from the date of the award. The proviso to Sub Section (1) of Section 28A states that in computing the period of limitation of three months, the day on which the award was pronounced and the time requisite for obtaining the copy of the award shall be excluded.

There is no requirement under law that the certified copy should be obtained after engaging an advocate. The proviso to Section 28A(1) is intended for excluding the time requisite to obtain certified copy of award, while computing the period of limitation. The time requisite for obtaining a copy of the award shall be excluded in computing the period of limitation of three months. In the matter of computation of the period of limitation, it is not a reason at all to deny the benefit of exclusion of the period under the proviso on the ground that no lawyer was engaged to get the certified copy of the judgment. A requirement which is not provided under law should not be invented by the Land Acquisition Officer to reject the application under Section 28A. If what is intended by the Land Acquisition Officer is that an Advocate had obtained certified copy of the judgment without a vakalath executed by the applicant, that is also not a reason for rejecting the application. If there is any such defect, it was for the Land Acquisition Court to consider while issuing certified copy. Therefore, I am of the view that the third ground on which the Land Acquisition Officer rejected the application, is illegal

and without jurisdiction.

7. For the forgoing reasons, I set aside Ext. P6 order and direct the first respondent to deal with the application under Section 28A in accordance with law and in the light of the observations made above.

The Writ petition is allowed as above.

K.T.SANKARAN,
JUDGE

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